

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

JUN 29 2012

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2011-0242
)	DEPARTMENT A
Appellee,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
ISRAEL VASQUEZ,)	the Supreme Court
)	
Appellant.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF COCHISE COUNTY

Cause No. CR201000952

Honorable James L. Conlogue, Judge

AFFIRMED

John R. Gustafson

Tempe
Attorney for Appellant

B R A M M E R, Judge.

¶1 Israel Vasquez appeals from the trial court's August 2011 orders revoking his probation and sentencing him to the presumptive, one-year term of imprisonment, with credit for forty-five days' presentence incarceration. Counsel has filed a brief in compliance with *Anders v. California*, 386 U.S. 738 (1967), *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999), stating he

has found no “arguable grounds for reversal,” and asking us to review the record pursuant to *Anders*. Vasquez has not filed a supplemental brief.

¶2 Pursuant to our obligation under *Anders*, we have reviewed the entire record and are satisfied it supports counsel’s recitation of the facts. Viewed in the light most favorable to upholding the trial court’s finding of multiple probation violations, *see State v. Vaughn*, 217 Ariz. 518, n.2, 176 P.3d 716, 717 n.2 (App. 2008), the evidence establishes the following. Pursuant to a plea agreement, Israel Vasquez was convicted of threatening or intimidating by word or conduct to cause physical injury in December 2010. *See* A.R.S. § 13-1202(A)(1). The court suspended the imposition of sentence and placed Vasquez on supervised probation for a period of two years in January 2011. In June 2011, the probation department filed a petition to revoke probation, followed by an amended petition the following month, alleging Vasquez had violated multiple conditions of his probation. After a contested violation hearing, the court found Vasquez had violated his probationary terms by failing to call the automated call-in system for drug testing on six¹ occasions, and by committing criminal damage and assault by throwing a bottle “to insult or provoke,” in violation of the condition of his probation that he “obey[] all laws.” *See* A.R.S. §§ 13-1602, 13-1203.

¶3 A probation violation must be established by a preponderance of the evidence, Ariz. R. Crim. P. 27.8(b)(3), and we will uphold a trial court’s finding of a

¹Although the minute entry from the probation violation hearing lists June 8 twice on the list of dates Vasquez had failed to call in to see if he had to submit for drug testing, totaling seven occurrences, it is clear from the record the court actually found he failed to call only six times.

violation “unless it is arbitrary or unsupported by any theory of evidence.” *State v. Moore*, 125 Ariz. 305, 306, 609 P.2d 575, 576 (1980). The court’s findings here were supported by the record, and the sentence imposed upon the revocation of Vasquez’s probation was within the range authorized by law. *See* A.R.S. § 13-702. The court acted within its discretion by revoking Vasquez’s probation and sentencing him to the presumptive prison term. *See* A.R.S. § 13-917(B) (trial court may revoke probation in its discretion and impose prison term as authorized by law).

¶4 In accordance with our obligation under *Anders*, we have reviewed the record for fundamental, reversible error, and have found none. We thus affirm the trial court’s findings of probation violations, its revocation of Vasquez’s probation, and the sentence imposed.

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Presiding Judge